

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action By:

Mobil Oil Corporation
3700 West 190th Street
Torrance, CA 90509

and

American Distributing Company
3809 Broadway
Everett, WA 98021

and

Mr. A. P. Miller
926 Grand Avenue
Everett, WA 98201

AGREED ORDER

No. DE

TO:

Mobil Oil Corporation
3700 West 190th Street
Torrance, CA 90509

and

American Distributing Company
3809 Broadway
Everett, WA 98021

and

Mr. A. P. Miller
926 Grand Avenue
Everett, WA 98201

I.

JURISDICTION

1. This Agreed Order is issued pursuant to the authority of RCW 70.105D.050(1).

II.

DEFINITIONS

2. Unless otherwise specified, the definitions set forth in RCW chapter 70.105D and WAC chapter 173-340 shall control the meanings of the terms used in this Agreed Order.

3. The term "Attachment" means those documents that are attached to this Agreed Order.

4. The term "Miller Property" means lots 1 through 9 and part of lot 10 of Block 619, Plat of Everett, Division C, Everett, Washington, also known as 2717 Federal Avenue in Everett, Snohomish County, Washington.

5. The term "Mobil Property" means lots 11 through 14 and part of lot 10 of Block 619, Plat of Everett, Division C, Everett, Washington, also known as 2731 Federal Avenue in Everett, Snohomish County, Washington.

6. The term "Facility" or "Site" means the Miller Property and the Mobil Property, including groundwater and surface water on or under these properties, and the site extends both vertically and laterally to any other area where hazardous substances have otherwise come to be located.

III.

FINDINGS OF FACT

7. Ecology makes the following Findings of Fact, without admission of such facts by the Mobil Oil Corporation, the American Distributing Company and/or Mr. A. P. Miller, hereinafter referred to individually as potentially liable persons ("PLP" or "PLPs") or collectively as the potentially liable person group ("PLP Group").

8. The Mobil Oil Corporation ("Mobil") is the successor to Socony-Mobil Oil Company, Inc., a New York corporation, which merged in or about 1959 with General Petroleum of Delaware, the successor to General Petroleum of California. General Petroleum of California leased the Mobil and Miller properties from the Great Northern Railway of Minnesota from about August 1922 until the time of sale in approximately 1927. See Attachment A. Attachment A is an integral and enforceable part of this Agreed Order and is hereby incorporated by reference.

9. Mobil and its predecessors owned and operated a bulk petroleum plant previously located on lots 1 through 14 of Block 619, Plat of Everett, Division C, Everett, Washington, from about 1927 to about 1974. The operations of Mobil and its predecessors included storing and distributing petroleum products at the Site from approximately 1927 to approximately 1974. See Attachment B. Attachment B is an integral and enforceable part of this Agreed Order and is hereby incorporated by reference.

10. In or about September 1974, Mobil sold to Mr. A. P. Miller ("Miller") lots 1 through 9 and part of lot 10 of Block 619, Plat of Everett, Division C, Everett, Washington, for use by the American Distributing Company. See Attachment B.

11. The American Distributing Company ("American") operated those sections of the petroleum bulk plant previously located on lots 1 through 9 and part of lot 10 of Block 619, Plat of Everett, Division C, Everett, Washington, from approximately 1974 until approximately 1990. The operations of American

included receiving, storing and distributing bulk petroleum heating fuels at the Miller Property. The plant ceased bulk petroleum operations in 1990, and some of the improvements on the Miller Property, including most tanks, have been removed. See Attachment B.

12. Mobil owned and operated a bulk petroleum distribution plant at the Mobil Property. The operations of Mobil included receiving, storing and distributing petroleum products at the Mobil Property. The plant ceased petroleum bulk operations in 1987, and most of the improvements on the Mobil Property have been removed. See Attachment B.

13. Mobil currently owns lots 11 through 14 and part of lot 10 of Block 619, Plat of Everett, Division C, Everett, Washington. See Attachment B.

14. Miller currently owns lots 1 through 9 and part of lot 10 of Block 619, Plat of Everett, Division C, Everett, Washington. See Attachment B.

15. American currently maintains and controls access to the Miller Property. See Attachment B.

16. On or about February 28, 1997, Ecology received a report entitled "LPH Recovery Technical Memorandum." The report was prepared by PTI Environmental Services ("PTI") on behalf of Mobil and American. The report summarizes prior investigations which documented the presence of liquid-phase petroleum hydrocarbons in monitoring wells on the Site. In addition, the report describes liquid-phase hydrocarbon recovery activities at the Site by Mobil and American. See Attachment C. Attachment C is included as a reference document and is not an integral or enforceable part of this Agreed Order.

17. On or about May 13, 1997, Ecology received a report entitled "LPH Recovery Report." The report was also prepared by PTI on behalf of Mobil and American. The report provides detailed information regarding ongoing efforts by Mobil and American to recover liquid-phase hydrocarbons from wells on the Site. See Attachment C. Attachment C is included as a reference document and is not an integral or enforceable part of this Agreed Order.

IV.

ECOLOGY DETERMINATIONS

18. Mobil is an "owner" and/or "operator" as defined in RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4).

19. American is an "owner" and/or "operator" as defined in RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4).

20. Miller is an "owner" and/or "operator" as defined in RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4).

21. The Facility is known as the "Mobil-American Site" and is located at 2717 and 2731 Federal Avenue, Everett, Washington 98201. The Facility consists of the Miller Property and the Mobil Property, including groundwater and surface water on or under these properties, and the site extends both vertically and laterally to any other area where hazardous substances have otherwise come to be located.

22. The substances found at the Facility are "hazardous substances" as defined at RCW 70.105D.020(7).

23. Based on the presence of these hazardous substances at the Facility and all factors known to Ecology, there is a release or threatened release of hazardous substances from the Facility, as defined at RCW 70.105D.020(20).

24. By letter dated January 2, 1996, Ecology notified Mobil, American and Miller that they were each a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.

25. Pursuant to RCW 70.105D.030(1) and 70.105D.050, Ecology may require potentially liable persons to investigate or conduct other remedial actions, with respect to the release or threatened release of hazardous substances, whenever it believes such action to be in the public interest.

26. Based on the foregoing facts, Ecology believes the remedial action required by this Agreed Order is in the public interest.

V.

WORK TO BE PERFORMED

27. Based on the foregoing Facts and Determinations, it is hereby ordered that the PLP Group take the following remedial actions and that these actions be conducted in accordance with WAC chapter 173-340 unless otherwise specifically provided for herein.

28. Not later than thirty (30) calendar days after the effective date of this Agreed Order, the PLP Group shall begin preparation of a Remedial Investigation/Focused Feasibility Study Report ("RI/FFS Report") for Ecology approval as described in the approved RI/FFS Work Plan. See Attachment D. Attachment D is an integral and enforceable part of this Agreed Order and is hereby incorporated by reference.

29. Not later than thirty (30) calendar days after Ecology approves the RI/FFS Report, the PLP Group shall begin preparation of a Draft Interim Action Work Plan for Ecology approval. Once the Draft Interim Action Work Plan is approved, it shall be considered the Interim Action Work Plan. Ecology will publish the approved RI/FFS Report and the approved Interim Action Work Plan for concurrent public comment.

30. No later than thirty (30) calendar days after expiration of the public comment period, the PLP Group shall implement and perform the work described in the Interim Action Work Plan.

VI.

REPORTING REQUIREMENTS

31. All reports required by this Agreed Order shall be completed for the Site as a whole by a single designated person, agent or firm agreed upon by the PLP Group. If analytical data is obtained, it shall be likewise collected and submitted for analysis to appropriate laboratories, depending on the type of analysis required or to obtain confirmation or comparative analyses, if required. 32. The PLP Group shall submit such reports as are required by the schedule set forth in the approved RI/FFS Work Plan. See Attachment D. The letters shall describe the status of Site activities for each month and proposed actions for the following month.

33. All scheduled deliverables identified in the approved RI/FFS Work Plan (Attachment D), including groundwater sampling data, shall be submitted to Ecology in accordance with WAC 173-340-840 unless otherwise specified in this Agreed Order.

34. All non-privileged historic reports, letters, notes, memos, laboratory reports or data transmittals and any other documents or information in any form about, for or relating to the Site in the possession of any PLP and/or any consultant, advisor, employee, agent or assign of any PLP shall be made available for inspection by the Ecology Site Coordinator within fifteen (15) calendar days of the effective date of this Agreed Order.

VII.

TERMS AND CONDITIONS OF AGREED ORDER

35. Public Notices. RCW 70.105D.030(2)(a) requires that, at a minimum,

this Agreed Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Agreed Order should public comment disclose facts or considerations which indicate to Ecology that the Agreed Order is inadequate or improper in any respect.

36. Remedial Action Costs.

a. The PLP Group shall pay to Ecology costs incurred by Ecology pursuant to this Agreed Order. These costs shall include work performed by Ecology or its contractors for investigations, remedial actions, and Agreed Order preparation, oversight and administration. Ecology costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2).

b. The PLP Group shall pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff and the amount of time spent by involved staff members on the project. A general description of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges as specified in WAC 173-340-550(4).

37. Designated Project Coordinators.

a. The project coordinator for Ecology is:

Joanne Polayes
Toxics Cleanup Program
Department of Ecology
Northwest Regional Office
3190-160th Ave. S.E.
Bellevue, WA 98008-5452
Telephone: (425) 649-7233
Facsimile: (425) 649-7098

b. The project coordinator for the PLP Group is:

Cherine Foutch
Mobil Business Resources Corporation
2063 Main Street, Suite 501
Oakley, CA 94561
Telephone: (925) 625-1173
Facsimile: (925) 625-1187

c. The project coordinators shall be responsible for overseeing the implementation of this Agreed Order. To the maximum extent possible, communications between Ecology and the PLP Group and all documents, including reports, approvals and other correspondence concerning the activities performed pursuant to the terms and conditions of this Agreed Order, shall be directed through the project coordinators. Should Ecology or the PLP Group change project coordinators, written notification shall be provided to Ecology or the PLP Group at least ten (10) calendar days prior to the change.

38. Performance.

a. All work performed pursuant to this Agreed Order shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or similar expert, with appropriate training, experience and

expertise in hazardous waste site investigation and cleanup. The PLP Group shall notify Ecology as to the identity of such engineers or hydrogeologist(s), and of any contractors and subcontractors to be used in carrying out the terms of this Agreed Order, in advance of their involvement at the Site. The PLP Group shall provide a copy of this Agreed Order to all agents, contractors and subcontractors retained to perform work required by this Agreed Order and shall ensure that all work undertaken by such agents, contractors and subcontractors will be in compliance with this Agreed Order.

b. Except where necessary to abate an emergency situation, the PLP Group shall not perform any remedial actions at the Site outside that required by this Agreed Order unless Ecology concurs, in writing, with such additional remedial actions. WAC 173-340-400(7)(b)(i) requires that "construction" performed on the Site must be under the supervision of a professional engineer registered in the state of Washington.

39. Access. Ecology or any Ecology authorized representative shall have the authority to enter and freely move about the Site at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs and contracts related to the work being performed pursuant to this Agreed Order; reviewing the progress in carrying out the terms of this Agreed Order; conducting such tests or collecting samples as Ecology or the project coordinator may deem necessary; using a camera, sound recording or other documentary type equipment to record work done pursuant to this Agreed Order; and verifying the data submitted to Ecology by the PLP Group. By signing this Agreed Order, the PLP Group agrees that this Agreed Order constitutes reasonable notice of access and agrees to allow access to the Site at all reasonable times for purposes of overseeing work performed under this Agreed Order. Ecology shall provide seven (7) days' notice to the PLP Group before any planned sampling activity and shall allow split or replicate samples to be taken by the PLP Group during such sampling unless doing so interferes with Ecology's sampling. The PLP Group shall provide seven (7) days' notice to Ecology before any planned sampling activity and shall allow split or replicate samples to be taken by Ecology.

40. Public Participation. The PLP Group shall prepare and/or update a public participation plan for the Site. Ecology shall maintain the responsibility for public participation at the Site. The PLP Group shall help coordinate and implement public participation for the Site.

41. Retention of Records. The PLP Group shall preserve in a readily retrievable fashion, during the pendency of this Agreed Order and for ten (10) years from the date of completion of the work performed pursuant to this Agreed Order, all records, reports, documents and underlying data in its possession relevant to this Agreed Order. Should any portion of the work performed hereunder be undertaken through contractors or agents of the PLP Group, then the PLP Group agrees to include in their contract with such contractors or agents a record retention requirement meeting the terms of this Paragraph.

42. Dispute Resolution. The PLP Group may request Ecology to resolve disputes which may arise during the implementation of this Agreed Order. Such request shall be in writing and directed to the signatory, or his/her successors, to this Agreed Order. Ecology resolution of the dispute shall be binding and final. The PLP Group is not relieved of any requirement of this Agreed Order during the pendency of the dispute and remains responsible for timely compliance with the terms of the Agreed Order unless otherwise provided

by Ecology in writing.

43. Reservation of Rights -- No Settlement.

a. This Agreed Order is not a settlement under RCW chapter 70.105D. Ecology's signature on this Agreed Order in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority. Ecology reserves the right to bring an action against the PLP Group to recover remedial action costs not paid to or received by Ecology under this Agreed Order. In addition, Ecology will not take additional enforcement actions against the PLP Group to require those remedial actions required by this Agreed Order, provided the PLP Group complies with this Agreed Order.

b. Ecology reserves the right, however, to require additional remedial actions at the Site should it deem such actions necessary.

c. Ecology also reserves all rights regarding the injury to, destruction of or loss of natural resources resulting from the releases or threatened releases of hazardous substances from the Site.

d. In the event Ecology determines that conditions at the Site are creating or have the potential to create a danger to the health or welfare of the people on the Site or in the surrounding area or to the environment, Ecology may order the PLP Group to stop further implementation of this Agreed Order for such period of time as needed to abate the danger.

44. Transference of Property.

a. No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold or other interest in any portion of the Site shall be consummated by the PLP Group without provision for continued implementation of all requirements of this Agreed Order and implementation of any remedial actions found to be necessary as a result of this Agreed Order.

b. Prior to transfer of any legal or equitable interest the PLP Group may have in the Site or any portions thereof, the PLP Group shall serve a copy of this Agreed Order upon any prospective purchaser, lessee, transferee, assignee or other successor in such interest. At least thirty (30) days prior to finalization of any transfer, the PLP Group shall notify Ecology of the contemplated transfer.

45. Compliance With Applicable Laws.

a. All actions carried out by the PLP Group pursuant to this Agreed Order shall be done in accordance with all applicable federal, state and local requirements, including requirements to obtain necessary permits, except as specified in RCW 70.105D.090(1).

b. Pursuant to RCW 70.105D.090(1), the substantive requirements of Chapters 70.94, 70.95, 70.105, 75.20, 90.48 and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals for the remedial action under this Agreed Order that are known to be applicable at the time of issuance of the Agreed Order have been identified by the PLP Group. See Attachment E. Additional requirements will be added by amendment as they are identified and determined to be applicable by the Ecology Site Coordinator and are binding and enforceable requirements of the Agreed Order.

c. The PLP Group has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Agreed Order. In the event the PLP Group determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Agreed Order, it shall promptly notify Ecology of this determination.

Ecology shall determine whether Ecology or the PLP Group shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the PLP Group shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on substantive requirements that must be met by the PLP Group and on how the PLP Group must meet those requirements. Ecology shall inform the PLP Group in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Agreed Order. The PLP Group shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination. Ecology shall make every effort to reach its final determination within twenty-one (21) days.

d. Ecology shall ensure that notice and opportunity for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this Section.

e. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for the State to administer any federal law, the exemption shall not apply, and the PLP Group shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

VIII.

SATISFACTION OF THIS AGREED ORDER

46. The provisions of this Agreed Order shall be deemed satisfied upon the PLP Group's receipt of written notification from Ecology that the PLP Group has completed the remedial activity required by this Agreed Order, as amended by any modifications, and that all other provisions of this Agreed Order have been complied with. Ecology will make every reasonable effort to respond within ten (10) working days of receipt of requests under this Paragraph from the PLP Group. Such requests shall be both verbal by telephone and in writing to the Ecology Site Coordinator.

IX.

ENFORCEMENT

47. Pursuant to RCW 70.105D.050, this Agreed Order may be enforced as follows:

a. The Attorney General may bring an action to enforce this Agreed Order in a state or federal court.

b. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.

c. In the event the PLP Group refuses, without sufficient cause, to comply with any term of this Agreed Order, the PLP Group will be liable for:

- i. up to three times the amount of any costs incurred by the state of Washington as a result of its refusal to comply; and
- ii. civil penalties of up to \$25,000 per day for each day it refuses to comply.

d. This Agreed Order is not appealable to the Washington

State Pollution Control Hearings Board. This Agreed Order may be reviewed only as provided under RCW 70.105D.060.

48. Each PLP named in this Agreed Order is individually responsible for compliance with the terms and conditions of this Agreed Order. Any reference to or requirement of the PLP Group applies to all PLPs named. Compliance with the Agreed Order by any PLP is not conditioned on the performance of any other PLP. Similarly, the right of Ecology to enforce the Agreed Order against any PLP is not conditioned on the performance of or enforcement against any other PLP.

Effective date of this Agreed Order: _____, 1998.

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

By:

Michael J. Gallagher
Section Manager
Toxics Cleanup Program
Northwest Regional Office

MOBIL OIL CORPORATION

By: _____

Title: _____

AMERICAN DISTRIBUTING COMPANY

By: _____

Title: _____

A. P. MILLER

By: _____